

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 8, 2009 appellant, then a 24-year-old materials expediter, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 2009 he injured his left knee when moving pallets of material with the use of a pallet jack while in the performance of duty. Following a request for surgery, OWCP formally adjudicated the claim and accepted left knee sprain, lateral collateral ligament; old bucket handle tear of left medial meniscus and left knee contusion. Appellant underwent OWCP-authorized left knee arthroscopic surgeries on July 23, 2009 and October 27, 2016. OWCP paid him intermittent wage-loss compensation on the supplemental rolls through November 21, 2016.

In a report dated May 17, 2017, Dr. Paul A. Stanton, an osteopath Board-certified in orthopedic surgery, related that a final medical evaluation was performed at the request of appellant. He related appellant's medical history and physical examination findings. Dr. Stanton noted that appellant had returned to full-duty work and that future medical care was not anticipated. He concluded that appellant had reached a permanent and stationary level of disability.

Appellant's last medical examination of record prior to his notice of recurrence of medical treatment was conducted on December 1, 2017. In a report of even date, Dr. Amarilda Christensen, a Board-certified occupational medicine specialist, performed a permanent impairment evaluation and concluded that appellant had two percent permanent impairment of the left lower extremity.<sup>2</sup>

On January 26, 2021 appellant filed a Form CA-2a alleging that he sustained a recurrence of the need for medical treatment, commencing December 2, 2020 causally related to his accepted left knee employment conditions. He asserted that it was difficult to bend, stoop, and climb stairs. Appellant also noted that since he returned to work he could not seek medical treatment as his case was closed.

In a development letter dated February 16, 2021, OWCP informed appellant of the definition of a recurrence of a work-related medical condition for medical treatment and requested that he submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to the relationship between his current need for medical treatment and the accepted employment conditions. It provided a questionnaire for his completion, which posed questions regarding his medical treatment.<sup>3</sup> OWCP afforded appellant 30 days to respond.

In a March 17, 2021 statement, appellant reported that he had experienced issues with his left knee since his original injury, which had progressively worsened following the second surgery.

---

<sup>2</sup> By decisions dated February 17, 2010 and March 6, 2018, OWCP granted appellant schedule award for one percent permanent impairment of the left lower extremity, and an additional schedule award for two percent permanent left lower extremity, respectively, for a total three percent permanent impairment of the left lower extremity.

<sup>3</sup> OWCP advised appellant that, if a new traumatic work injury or occupational disease (Form CA-2) produced by the work environment occurred, a new claim might need to be filed. This was true even if the new incident or exposure involved the same part of the body as previously affected.

He noted that recent x-rays showed his knee was arthritic and narrowing as a result of his arthroscopic surgeries and meniscus tear repair.

Appellant submitted reports from Dr. Benjamin M. Woodhead, an orthopedic surgeon, dated February 19 and March 10, 2021. In his February 19, 2021 report, Dr. Woodhead noted that appellant was seen for follow up six weeks' status postsurgery, and his left knee. With regard to the left knee, he noted appellant's medical history, presented examination findings, and diagnosed left knee patellofemoral syndrome and left knee mild arthritis. Dr. Woodhead indicated that appellant had some irritation in the knee, but that it was difficult to say if his patellofemoral symptoms stemmed from his prior surgeries or work-related injuries without having all the records. In the March 10, 2021 report, he indicated that appellant had anterior knee pain, patellofemoral symptoms; mild-to-moderate degenerative changes on x-rays; left knee patellofemoral syndrome, mild arthritis. Dr. Woodhead reiterated that he was unable to answer questions regarding causal relationship as he did not have all of appellant's records.

By decision dated April 6, 2021, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish a recurrence of the need for medical treatment due to a worsening of his accepted employment injuries. It found that there was no medical evidence to support that the claimed recurrence was due to the accepted work-related injury of May 5, 2009.

On April 26, 2021 appellant requested reconsideration. He indicated that he was never notified by OWCP that his case was closed for medical treatment and argued that it should not have been closed. Appellant requested that his case be reopened, and that the acceptance of his claim be expanded to include osteoarthritis and patellofemoral injuries and medical treatment for such conditions. Duplicative copies of evidence previously of record was submitted.<sup>4</sup>

By decision dated May 5, 2021, OWCP denied appellant's request for reconsideration.<sup>5</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.<sup>6</sup> An employee has the burden of proof to establish that he or she

---

<sup>4</sup> This included June 2, 2012 and August 13, 2016 magnetic resonance imaging (MRI) scans of the left knee and Dr. Woodhead's February 19 and March 10, 2021 reports.

<sup>5</sup> OWCP explained why an "October 26, 2020" medical report from Dr. Louis C. Redix, Jr., an orthopedic surgery specialist, supported case closure. The Board notes that the medical report from Dr. Redix OWCP referenced is dated October 26, 2009, not October 26, 2020. In his October 26, 2009 report, Dr. Redix, indicated, "The patient will not require any additional medical treatment or follow up. The patient is not a surgical candidate nor is he likely to become one. There is no need for continued medication or physical therapy. No further intervention will be needed or anticipated." This report was used in the calculation of appellant's February 17, 2010 schedule award. *See supra* note 2.

<sup>6</sup> 20 C.F.R. § 10.5(y).

sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.<sup>7</sup>

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden.<sup>8</sup> To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.<sup>9</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment on or after December 2, 2020 causally related to his accepted May 5, 2009 employment injury.

In a report dated May 17, 2017, Dr. Stanton, appellant's treating physician, related that a final medical evaluation was performed at appellant's request. He noted that appellant had returned to full-duty work and that future medical care was not anticipated. Following this report, the other medical evidence received of record prior to appellant's request for further medical treatment did not document further medical treatment, but evaluated appellant for schedule award purposes. The Board therefore finds that appellant's claim for recurrence of medical condition was made more than 90 days after release from medical care by Dr. Stanton, and therefore his claim for recurrence of medical treatment must be supported by medical evidence of a causal relationship between his current condition and the accepted May 5, 2009 employment injury.<sup>11</sup>

In his February 19, 2021 report, Dr. Woodhead noted the medical history of appellant's left knee, presented examination findings, and diagnosed left knee patellofemoral syndrome and left knee mild arthritis. He indicated that appellant had some irritation in the knee, but opined that it was difficult to say if appellant's patellofemoral symptoms stemmed from his prior surgeries or work-related injuries without having all the records. In the March 10, 2021 report, Dr. Woodhead reiterated that he was unable to answer the causal relationship of appellant's anterior knee pain, patellofemoral symptoms; mild-to-moderate degenerative changes on x-rays; left knee patellofemoral syndrome, mild arthritis as he did not have all of appellant's records and films. His reports are of limited probative value as he was unable to offer an opinion on the issue of causal relationship. The Board has held that a medical report is of no probative value on a given medical

---

<sup>7</sup> *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

<sup>8</sup> Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

<sup>9</sup> *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

<sup>10</sup> *M.P.*, *supra* note 7; *Michael Stockert*, 39 ECAB 1186 (1988).

<sup>11</sup> *Supra* note 9.

matter if it does not contain an opinion on that matter.<sup>12</sup> Thus, these reports are insufficient to establish appellant's recurrence claim.

As the medical evidence of record does not contain a rationalized medical opinion establishing that appellant required further medical care on or after December 2, 2020 causally related to his accepted employment conditions, the Board finds that appellant has not met his burden of proof to establish his recurrence claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>13</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>14</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>15</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>16</sup>

---

<sup>12</sup> See *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>13</sup> 5 U.S.C. § 8128(a); *T.T.*, Docket No. 19-0319 (issued October 26, 2020); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>14</sup> 20 C.F.R. § 10.606(b)(3); see *V.D.*, Docket No. 20-0569 (issued December 7, 2020); *B.R.*, Docket No. 19-0372 (issued February 20, 2020); see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>15</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>16</sup> *Id.* at § 10.608(b); see *M.E.*, Docket No. 20-0067 (issued October 15, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant argued that OWCP prematurely closed his case as he was not released from medical care. However as previously discussed, Dr. Stanton in his May 17, 2017 report released appellant from medical care. Appellant's allegations that he was not released from medical care do not demonstrate that OWCP erroneously applied or interpreted a specific point of law and do not constitute a valid new legal argument. Consequently, the Board finds that appellant was not entitled to a review of the merits based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>17</sup>

Appellant also failed to submit relevant and pertinent new evidence in support of his reconsideration request. He submitted duplicative evidence previously of record. Evidence which repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>18</sup> Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

## **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment on or after December 2, 2020 causally related to his accepted May 5, 2009 employment injury. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>17</sup> *D.B.*, Docket No. 19-1963 (issued July 1, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>18</sup> *R.B.*, Docket No. 21-0035 (issued May 13, 2021); *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 6 and May 5, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 28, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board